

DEN 0261

ie Service

Department of the Treasury

31 Hopkins Plaza, Baltimore, MD 21201

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

JUN - 5 1996

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(4) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED] under the non-profit laws of [REDACTED]. The purposes for which you were organized are as follows:

"(a) To purchase, take, receive, lease or otherwise acquire, own, hold, use, improve, and otherwise deal in and with real estate and estates, interests, rights and equities of all kinds in land.

(b) To manage and control certain common lands referred to on a plat entitled [REDACTED], which is now a concept plat and further plats to be filed pursuant to said concept plat among the Plat Records of [REDACTED] and to enforce restrictions, receive funds, assess members and enforce assessments as may be necessary.

(c) To perform such incidental services as are deemed necessary and essential to the good order and condition of said common lands including but not limited to maintenance of surface water control structures, any private roads, trails or pathways over and among said common lands, woodlands and structures of any kind which may be placed upon the common lands pursuant to the plan of the subdivisions and the By-laws of the Corporation.

(d) The foregoing enumeration of the purposes, objectives and business of the Corporation is made in furtherance of and not in limitation of the powers conferred upon the Corporation by law, and is not intended, by the mention of any particular purpose, objective or business, in any manner to limit or restrict any of the power of the Corporation. The Corporation is formed upon the articles, conditions and objectives herein expressed and subject in all particulars to the limitations relative to Corporations which are contained in the General Laws of this State."

COPY



In your Bylaws, Covenants, Conditions and Restrictions, your stated purposes are:

- "(1) To protect the purchasers of Lots in [REDACTED] from depreciation in the value thereof, and to insure them of uniformity of the development of said Lots; and
- (2) To facilitate the sale by the Company, its successors and assigns of the land in [REDACTED] by reason of its ability to assure such purchasers of uniformity and protection against such depreciation; and
- (3) to make certain that the Covenants shall apply uniformly to all enumerated Lots owned by the Company which are shown on the [REDACTED] for the mutual advantage of the Company, the owners, any Mortgagee, and to all those who may in the future claim title through any of the above."

The organization was formed by the real estate developer to own and maintain common areas and to enforce the covenants and by-laws of the community.

Your organization's activities consist of mowing grass, mulching and pruning existing trees and flower beds, and any other care or maintenance as necessary. The areas maintained by your association are a pond and its surrounding open space, a wooden gazebo, a 50ft wide easement that leads to a nature trail and two entrances with easements on each side of the development. The common areas are for the enjoyment of the homeowners and are not open to the public. Your organization also holds seasonal social events for the enjoyment of your members.

New signs were selected for the development at a meeting held on [REDACTED]. A neighborhood watch sign to be placed at each entrance and new signs around the pond stating "For Residents Only" and "Closed Dusk to Dawn" will be posted.

Your membership consists of Class A members who are homeowners with one vote per lot owned. Class B members consist of only the developer who has three votes per lot. The developer currently own [REDACTED] lots out of the original [REDACTED].

Your income is derived from membership dues and special assessments which are secured by a continuing lien upon the property against which the assessment is made.

Your expenses include landscaping, insurance, electric, social and security activities.

Section 501(c)(4) of the Code provides for the recognition of civic leagues, social welfare organizations, or other organizations, not organized for profit, but operated exclusively for the promotion of social welfare.

**COPY**



Section 1.501(c)(4)-1(a)(2)(i) of the Federal Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 72-102, 1972-1 C.B. 149, states that a non-profit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for use of the residents is exempt under section 501(c)(4) of the Code. Membership is required of all owners of real property in the development, and assessments are levied to support the organization's activities. It was held that by maintaining the property normally maintained by a municipal government, the organization served the common good and general welfare of the people of the community.

Revenue Ruling 74-99, 1974-1 C.B. 131, modified Revenue Ruling 72-102 by stating guidelines under which a homeowner's association could qualify for exemption under section 501(c)(4) of the Code. These guidelines are:

1. The organization must service a "community" which bears a reasonable, recognizable relationship to an area ordinarily identified as a governmental unit.
2. It must not conduct activities directed to the exterior maintenance of private residences; and
3. The common areas or facilities must be for the use and enjoyment of the general public.

This ruling states that a community, within the meaning of section 501(c)(4) of the Code and the regulations, "...is not simply an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein."

Revenue 74-99 states that it modifies the misconception given in Revenue Ruling 72-102 that a housing development is to be equated with the term "community" within the meaning of section 501(c)(4) of the Code, thereby giving rise to the implication that any housing development may qualify as a community for exemption purposes regardless of other facts in the case. The term "housing development" is not to be viewed as necessarily coextensive with the term "community", so that not every association which oversees a housing development is entitled to claim the exemption.

**COPY**



Revenue Ruling 74-99 states that Revenue Ruling 72-102 "...was intended only to approve ownership and maintenance by a homeowners' association of such areas as roadways and parklands, sidewalks, and street lights, access to, or the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowner's association..."

Access to, or the use and enjoyment of the common areas is not extended to the general public. Your common areas are for the private benefit of the members of your organization.

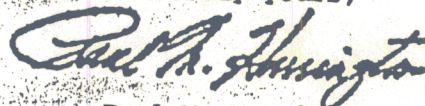
Accordingly, your organization does not meet the definition of a "community." The activities performed by your organization constitute private benefit to the members of your association. Therefore, we conclude that you are serving a private purpose rather than a public purpose and do not qualify for exemption under section 501(c)(4).

Until you have established exempt status, you are not relieved of the requirement for filing federal income tax returns.

Your attention is called to section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a non-exempt homeowners association may elect not to be taxed on its "exempt function income which includes membership dues, fees or assessments from owners of real property. The election is made by filing Form 1120H. If you determine that your organization qualifies under section 528, you may find it beneficial to make this election.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

Sincerely yours,



Paul M. Harrington  
District Director

Enclosure: Publication 892

COPY